

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION FOR APPROVAL) CASE NO. 2006-00136
OF THE INDIRECT TRANSFER OF)
CONTROL RELATING TO THE MERGER)
OF AT&T, INC. AND BELLSOUTH)
CORPORATION)

**XSPEDIUS MANAGEMENT COMPANY SWITCHED SERVICES, LLC'S AND
XSPEDIUS MANAGEMENT COMPANY OF LOUISVILLE, LLC'S RESPONSES
TO JOINT APPLICANTS' SECOND SET OF DATA REQUESTS**

Xspedius Management Company Switched Services, LLC and Xspedius
Management Company of Louisville, LLC (collectively "Xspedius" or "Respondents"),
by counsel, hereby submit their Responses to the Second Set of Data Requests
propounded by AT&T, Inc., BellSouth Corporation and BellSouth Telecommunications,
Inc. (referred to herein collectively as the "Joint Applicants").

DATA REQUEST NO. 1: Do you continue to agree that “AT&T will have the financial ability to provide reasonable service in Kentucky pursuant to KRS 278.020(5)” post-merger?

RESPONSE: Respondents' answer to this Data Request has not changed since their submission of responses filed May 11, 2006 to Joint Applicants' Initial Data Requests. Therefore, Respondents hereby adopt their Response to Data Request No. 1 of Joint Applicants' Initial Data Requests.

DATA REQUEST NO. 2: If your response to Request 1 is anything other than an unqualified yes, state with specificity each and every fact or theory that supports your response.

RESPONSE: *See Respondents' Response to Data Request No. 1 above.*

DATA REQUEST NO. 3: Do you continue to agree that “AT&T will have the technical ability to provide reasonable service in Kentucky pursuant to KRS 278.020(5)” post-merger?

RESPONSE: Respondents' answer to this Data Request has not changed since their submission of responses filed May 11, 2006 to Joint Applicants' Initial Data Requests. Therefore, Respondents hereby adopt their Response to Data Request No. 3 of Joint Applicants' Initial Data Requests.

DATA REQUEST NO. 4: If your response to Request 3 is anything other than an unqualified yes, state each and every fact or theory that supports your response.

RESPONSE: *See Respondents' Response to Data Request No. 3 above.*

DATA REQUEST NO. 5: Do you continue to agree that “AT&T will have the managerial ability to provide reasonable service in Kentucky pursuant to KRS 278.020(5)” post-merger?

RESPONSE: Respondents' answer to this Data Request has not changed since their submission of responses filed May 11, 2006 to Joint Applicants' Initial Data Requests. Therefore, Respondents hereby adopt their Response to Data Request No. 5 of Joint Applicants' Initial Data Requests.

DATA REQUEST NO. 6: If your response to Request 5 is anything other than an unqualified yes, state each and every fact or theory that supports your response.

RESPONSE: *See Respondents' Response to Data Request No. 5 above.*

DATA REQUEST NO. 7: On page 12 of Xspedius' Responses to Joint Applicants' Initial Data Requests, you allege that “[t]he proposed merger between AT&T and BellSouth will . . . make it all that more difficult for the KPSC to open Kentucky’s local markets to competition.”

- (a) Is the “local market” to which you referred the mass market (i.e. residential) or the enterprise market (i.e., business)?
- (b) If the term “local market” refers to the mass market, do you dispute that AT&T stopped marketing to mass market consumers in Kentucky in 2004?
- (c) If the term “local market” refers to the mass market, state with specificity all facts which support your theory that the merger of BellSouth with an entity that is not competing for mass market customers in Kentucky reduces competition.
- (d) If the term “local market” refers to the business market, state with specificity all facts that support your theory that BellSouth and AT&T are direct competitors in the business market in Kentucky.

RESPONSE:

- (a) The term “local market” referred to both residential and business customers.
- (b) Respondents do not have sufficient information to either confirm or deny this statement.
- (c) Respondents are continuing their analysis of the proposed merger and are

not yet in a position to fully respond. The statement is that the merger will make it more difficult to open local markets to competition. The merger will make the incumbent provider larger, with more resources and a larger geographic footprint than BellSouth currently enjoys. The larger the incumbent, the more difficult is the task of successfully competing against it.

(d) Respondents are continuing their analysis of the proposed merger and are not yet in a position to fully respond. Although additional facts are likely to become available, Respondents note that BellSouth had named both AT&T and SBC (separately) as competitors to it in the Kentucky TRO proceeding (*See* testimony of Pamela Tipton, Docket No. 2003-00379). The harm to competition alleged relates to the elimination of such competition. Additionally, the merger potentially reverses the movement of customers from monopoly to competitive providers, representing an additional setback for competition. Moreover, the merger will increase the scope and scale of BellSouth, take a company with 10 years of CLEC expertise out of the CLEC industry, and move it into BellSouth. This also eliminates one of the critical CLEC litigants from the competition proceedings in Kentucky.

DATA REQUEST NO. 5[8]: On page 14 of Xspedius' Responses to Joint Applicants' Initial Data Requests, you state that the combined entity "will enjoy an unprecedented geographic footprint that will uniquely position it to offer multi-location customers discounts and other pricing plans that cannot be matched by any competitor in Kentucky."

- (a) Please confirm that this alleged harm is limited to the business market.
- (b) Does the allegation that "an unprecedented geographic footprint" will create harm to competitors assume that AT&T owns facilities in Kentucky?
- (c) If the allegation based on an alleged "unprecedented geographic footprint" does not assume ownership of facilities by AT&T in Kentucky, state all facts upon which you claim that "an unprecedented geographical footprint" will cause harm.

RESPONSE:

- (a) Respondents do not believe that the merger's harm will be limited to the business market.
- (b) No. Post-merger, BellSouth will be in a position to leverage AT&T's nationwide facilities as a differentiating selling point when it sells to customers in Kentucky.
- (c) *See* Response to (b) above. Respondents also state that they are continuing their analysis of the proposed merger and are not yet in a position to fully respond. However, multi-location discounts are not limited to an entity's location in an

individual state. AT&T will be positioned to offer multi-location discounts across its entire footprint, including states formerly served by PacBell, Ameritech, Southwestern Bell, Southern New England Telephone and those additional “out of region” cities where SBC Telecom and AT&T (pre-merger) had established facilities.

DATA REQUEST NO. 6 [9]: On page 14 of Xspedius' Responses to Joint Applicants' Initial Data Requests, you state that "keeping the local network open will become even more difficult in the face of the sustained opposition from a post-merger carrier with the vast resources that will be enjoyed by AT&T/BellSouth."

(a) Is it your position that the Commission should deny the merger because the combined entity will have regulatory resources?

(b) Do you agree that the combined entity's legal obligations under Sections 251 and 252 of the Telecommunications Act of 1996 will remain unchanged after the merger of the Joint Applicants?

(c) If your response to Request 6(b) is anything other than an unqualified yes, state with specificity each and every fact or theory that supports your response.

(d) Do you agree that this Commission's authority to act under Section 251 and 252 of the Telecommunications Act of 1996 will remain unchanged after the merger of the Joint Applicants?

(e) If your response to Request 6(d) is anything other than an unqualified yes, state with specificity each and every fact or theory that supports your response.

RESPONSE:

(a) Respondents are continuing their analysis of the proposed merger and are not yet in a position to fully respond. At the very least, however, the Commission should consider the adoption of conditions designed to mitigate the adverse consequences of the

resource imbalance that will exist between the post-merger AT&T and the competitive carriers that remain in the market.

(b) The legal requirements are not changed by the merger. The resources available to BellSouth to frustrate the implementation of those requirements, however, will increase significantly.

(c) N/A

(d) The merger does not change the Commission's legal authority.

(e) N/A

DATA REQUEST NO. 8 [10]: Is AT&T a wholesale supplier of Xspedius in
Kentucky?

RESPONSE: Yes.

DATA REQUEST NO. 9 [11]: Has AT&T ever been a wholesale supplier of Xspedius
in Kentucky?

RESPONSE: Yes.

DATA REQUEST NO. 10 [12]: Does Xspedius compete in the mass market (i.e., for residential customers)?

RESPONSE: Not for residential customers, although Respondents do have small business customers who purchase DS-0 services.

DATA REQUEST NO. 11 [13]: Does Xspedius have any enterprise customers in Kentucky that generate over 1 million per year in revenue for Xspedius?

RESPONSE: Respondents object to Joint Applicants' Data Request No. 11 [13] as being vague and ambiguous. The answer is wholly dependent on the definition of “enterprise” which is not defined in Joint Applicants' request.

DATA REQUEST NO. 12 [14]: State with specificity each and every fact that supports your statement on page 17 of Xspedius' Responses that this merger is a "remonopolization of local phone service."

RESPONSE: *See* Respondents' Response to Joint Applicants' Data Request No. 7(d) above.

DATA REQUEST NO. 13 [15]: In which market do you contend you currently compete with AT&T in Kentucky?

RESPONSE: Xspedius competes primarily in Louisville and Lexington markets in Kentucky.

DATA REQUEST NO. 14 [16]: Xspedius' Responses to Joint Applicants Initial Data Requests are virtually identical to those of NuVox. Xspedius, however, did not raise concerns about the performance plan. Why not?

RESPONSE: Respondents object to Joint Applicants' Data Request No. 14[16] as being irrelevant and not leading to the discovery of admissible evidence. Subject to this objection, Respondents share NuVox's concerns about the performance plan and hereby adopt NuVox's Response to Data Request No. 13 of Joint Applicants' Initial Data Requests.

Submitted to and filed with the Kentucky Public Service Commission this 23rd day of May, 2006.

Respectfully submitted,

/s/ Henry S. Alford

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CERTIFICATE OF SERVICE

Counsel for Respondents Xspedius Management Company Switched Services, LLC and Xspedius Management Company of Louisville, LLC hereby certifies that a true and accurate electronic copy of this filing was transferred to the Commission via the Electronic Filing Center this 23rd day of May, 2006 and filed in hardcopy document form with the Commission also on the 23rd day of May, 2006. Further, consistent with the Commission's Order of April 12, 2006, notice of the filing of this Motion was served via electronic mail on all parties of record. Parties of record can access the information at the Commission's Electronic Filing Center located at <http://psc.ky.gov.efs/efsmain.aspx>.

/s/ Henry S. Alford

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